APPENDIX A

ORDER, UNITED STATES COURT OF CLAIMS

Charles L. PLATER v. THE UNITED STATES,
Ct. Cl. No. 117-81c, April 27, 1982.

IN THE UNITED STATES COURT OF CLAIMS

No. 117-81C

CHARLES L. PLATER	)	Civilian pay;
	)	removal of
v.	)	security guard
	)	for attempted
THE UNITED STATES	)	theft of
	)	government
	)	property;
	)	decision of
	)	Federal Appeals
	)	Authority
	)	sustaining
	)	removal upheld.

April 27, 1982

Richard L. Swick, attorney of record, for plaintiff.

Gerald L. Elston, with whom was Assistant Attorney General J. Paul McGrath, for defendant. Catherine M. Holzle, Department of Navy, of counsel.

Before FRIEDMAN, Chief Judge, KASHIWA, Judge, and MARKEY, Chief Judge of the United States Court of Customs and Patent Appeals.*

*Sitting by designation pursuant to 28 U.S.C. § 293(a) (1976).

FRIEDMAN, Chief Judge:

The plaintiff, formerly a security guard at a government installation, challenges the decision of the Federal Employee Appeals Authority ("Appeals Authority") of the Civil Service Commission that sustained his removal from his position for attempted theft of government property. Both parties have moved for summary judgment, and we heard oral argument. We uphold the Appeals Authority and dismiss the petition.

The facts are set forth in the decision of the Appeals Authority and need not be repeated at length. In brief, they are that the plaintiff filled two 5-gallon cans with gasoline from a pump at a government fuel station and was apprehended when he attempted to leave the installation in

an automobile containing the cans of gasoline. Theft of gasoline was a problem at the installation, and an additive had been placed in the government gasoline tanks to enable the government to identify its own fuel. When the government tested the gasoline in the two cans that the plaintiff attempted to remove from the installation, the tests identified it as government gasoline.

Before this court, the plaintiff contends that the agency did not comply with its procedures, that the agency's finding that the plaintiff attempted to steal government gasoline is not supported by substantial evidence, and that removal was an excessive penalty for the offense.

In a civilian pay case the scope of our review is limited to determining whether the procedural requirements have been met, whether the findings are supported by substantial evidence, and whether the challenged personnel action is arbitrary or capricious. Boyle v. United States, 207 Ct. Cl. 27, 34, 515 F.2d 1397, 1401 (1975). "It is not our function to substitute our judgment for that of the employing agency or the Civil Service Commission; rather, we review the case to determine whether their action was reasonable in light of all the evidence." Id. 515 F.2d at 1401. Under these standards we have no ground to set aside the determination of the Appeals Authority, the opinion of which adequately discusses and determines the issues in this case. On the basis of that decision, we uphold

the removal of the plaintiff from his position.

The defendant's motion for summary judgment is granted, the plaintiff's motion for summary judgment is denied, and the petition is dismissed.